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Minute of Dissent tabled by Mr. M.R. Masani, M.P. and  
Mr. Dahyabhai V. Patel, M.P., to the Report of the  
Joint Select Committee on the Patents Bill

We regret to find ourselves in disagreement with the majority of our colleagues in the Joint Select Committee on the Patents Bill.

It has been the practice in all countries for over a century to confer proprietary rights upon the inventor by law and to limit in certain respects what is absolutely necessary in the public interest without allowing those rights to be eroded by various types of exceptions. The justification for conferring these rights by way of letters patent has been that inventions involve huge expenditure and, therefore, unless the inventor can see some reward, such expenditure will not be undertaken. The inventor incurs a financial risk, namely, to make it worth while for a concern or a company not only to incur expenditure on research but also to bring the invented product to the stage of commercial utility. Only if the inventor is granted by way of a proprietary right a certain period of exclusivity to exploit the patent will he undertake this risk. Only at the end of this comes the recompense or the reward to the inventor and to those who take up the invention for industrial exploitation.

Out of numerous items that are undertaken for research only a few are patented. Many of them are abandoned because their commercial exploitation is not economically feasible. It follows, therefore, that the cost of an invention which is eventually a commercial success is very high indeed and, therefore, the social and economic justification for granting patents for such inventions is abundantly clear.

We are at a loss to understand how one could hold the view that the existence of a strong patent law in underdeveloped countries discourages scientific research and development. In fact, in the United States, the faster rate of industrial and scientific development in relation to industry and applied science occurred as a result of a strong patent law. The free exchange of patents has done immense good to most countries and has resulted in a rapid rate of growth internationally in the field of industrial, scientific and technical development.

Unfortunately, there is a kind of schizophrenia to be found in regard to the granting of adequate patent protection for inventions. On the one hand, many people want scientific and industrial development; on the other hand, they get obsessed with all kinds of claptrap about monopoly, pricing, social justice and making medicines and drugs available cheaply to everybody all over the country. Yet they know, as we all know, that a strong patent law has resulted in the greatest advance in the manufacture of medicines, drugs and foods.

We are at a stage at which we want industries to apply their maximum resources to research and development but, if the Bill is passed in its present form, this purpose will not be achieved. We are of the opinion that the main purpose of the Bill, which is to stimulate inventions amongst the citizens of India and to encourage research and development for industrial and technological progress, will not be served if the Bill is passed in the form in which it has been reported by the Committee. We feel that the Bill will not create a proper investment climate in India for the rapid growth of the industry, whether by Indian entrepreneurs or by import, where necessary, of foreign technology and investment.

A number of provisions of the Bill and in particular clauses 2(h), 3(d), 8, 48, 53, 87, 88, 93(3), 95(3), 99, 100 and 102 strike at some of the foundations of widely accepted principles in this field. In our view the basic validity of patents and their advantages are almost universally accepted and any restrictions on such rights should be governed by the principles that apply in regard to expropriation



This is in order to ensure that such measures are only taken in special and clearly defined circumstances, that there is provision for full representation and that the right of appeal to the courts of law is guaranteed. It appears to us that several parts of the present Bill run counter to these principles, tend to violate the legitimate rights of the patentee and do disservice to the general economic advancement of the country.

One issue on which we feel constrained to part company with the majority of our colleagues is that we see no justification for differentiating between various industries. There does not appear to us to be any reason for discrimination between inventions in different fields of production or enterprise. Since it is generally agreed that patent protection advances progress, we fail to understand why an important need of the consumer such as drugs and medicines should be denied the advantage of such protection and promotion.

We see no reason whatsoever why the term of sixteen years for all patents to be found in the existing law should be shortened. On the contrary, the world trend is in the opposite direction of prolonging the life of patents and, in the light of this, we are not prepared to accept any term shorter than sixteen years as the period of validity of all patents in all fields. This, in our view, should be without prejudice to the normal provisions to be found in the current Act in regard to a further extension of time in cases where the patent has not been found sufficiently remunerative.

We do not deny that there is room for carefully devised restrictions on property in patents in order to guard against a situation where an unrestricted operation of patents might, on balance, result in serious damage to the vital public interest. There is need to guard, however, against throwing the baby out with the bath water by a ready resort to measures of a kind which would deprive a whole category of patentees of their rights. What, in our view, is called for is a process where there is an examination of ~~each~~ each case on its merits, and a careful demarcation of the limits of interference and of adequate compensation for the damage suffered by the patentee.

We have carefully examined the provisions of the Bill in the light of the evidence recorded, the weight of which undoubtedly was in favour of strong patent protection. In order to bring the Bill in line with the trend of expert evidence and the universally accepted principles referred to above, some clauses would require deletion while many others require substantial modification. Unless this is done, we are of the view that the Bill as reported by the Committee should not be enacted.

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